THE BENEFITS OF BENCHMARKING AS RECOGNIZED IN MFJ PROCEEDINGS

Willkie Farr & Gallagher

October 2, 1998

The Benefits Of Benchmarking As Recognized In MFJ Proceedings

The Federal Communications Commission has observed that the ability to make benchmark comparisons arising from the Bell System's formation of seven autonomous regional local exchange companies, in place of the monolithic pre-divestiture Bell System operating company structure, constitutes an "important regulatory tool" whose benefits have been recognized on numerous occasions since the MFJ was proposed and implemented.[1] During the course of various MFJ-related proceedings, the Commission, the Justice Department, and the Courts all acknowledged and relied upon the ability of regulators to employ benchmarking in a variety of contexts. In addition, the RBOCs themselves, in their own court filings, repeatedly emphasized the importance of the benchmarks created by the AT&T divestiture in enhancing the ability of the Commission and other regulatory authorities to detect and deter anticompetitive conduct.[2]

Even before the MFJ was approved and implemented, the Justice Department, in its Competitive Impact Statement, implicitly recognized the value of the ability to utilize a benchmark approach to enhance the effectiveness of regulation, noting that while the proposed consent decree did not mandate

---

1 See In the Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, Order, FCC 97-286, 12 FCC Rcd 19985 at ¶¶ 148-149 (1997).

2 Id. at ¶ 149.

consolidation of the BOCs into any particular number of entities, AT&T affiliates had indicated that there would be multiple entities, and further stating that "the Department will take into account, as appropriate, the potential impact of the proposed configuration of BOCs on the likelihood that the [MFJ's] non-discrimination requirements will, in fact, be achieved."[3]

While the District Court did not explicitly address the issue of benchmarking in its 1982 opinion approving the proposed AT&T consent decree, with certain modifications,[4] the Court specifically cited the ability to make such comparisons in rejecting the Justice Department's proposal to alter one of the Court's proposed modifications, i.e., the provision allowing the RBOCs to "provide, but not manufacture" all types of customer

---

3 United States v. Western Elec. Co., 47 Fed. Reg. 7170, 7174-75 (Feb. 17, 1982) (United States Department of Justice, Competitive Impact Statement). Subsequently, in urging approval of the proposed GTE consent decree, the Department specifically cited the ability of regulators to utilize the divested BOCs as benchmarks against which to evaluate the conduct of the GTE operating companies ("GTOCs"), to ensure the GTOCs' compliance with the equal access standards included in the proposed decree. United States v. GTE Corp., 48 Fed. Reg. 46634, 46657 (October 13, 1983) (United States Department of Justice, Competitive Impact Statement).

4 United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982). In contrast, in his 1984 order approving the proposed GTE Consent Decree, Judge Greene noted that "GTE's implementation of equal access will be judged not only against the requirements of the decree, but also against two objective benchmarks: (1) the Bell Operating Companies' provision of equal access; and (2) the provision of equal access by the [GTOCs] in the cities not served by Sprint." United States v. GTE, 603 F.Supp. 730, 735 (D.D.C. 1984).

premises equipment.[5] In explaining its refusal to grant the Department's request to limit the BOCs to the provision of residential and single-line business CPE, the Court noted inter alia that concerns with regard to the potential for BOC discrimination in the installation and maintenance of CPE were alleviated by the fact that "claims of one Operating Company that it had particular difficulties or problems with the equipment of manufacturers it did not sell could be readily undermined by a comparison with the practices of the other six companies."[6] In a subsequent order, the District Court itself utilized the other six RBOCs as benchmarks in concluding that Pacific Bell's refusal to provide access to its lines for services originating from AT&T's coinless public telephones constituted a violation of the MFJ's equal access requirement, noting in its opinion that "[a]ll the Operating Companies except Pacific Bell appear to be providing the required access."[7]

In its 1987 Report to the District Court concerning the line of business restrictions imposed on the RBOCs under the MFJ, the Justice Department gave considerable weight to the

---

5 United States v. AT&T Co., 1982-2 Trade Cas. (CCH) ¶ 64,980 at 73,150-73,151 (filed August 23, 1982) (D.D.C.).

6 Id. at n.8.

7 United States v. Western Elec., Inc., 583 F.Supp. 1257, 1258, n.4 (D.D.C. 1984). Elsewhere in its opinion, the Court observed that "Pacific Bell seems to be the only Operating Company to have taken the position that it need not grant access to AT&T unless and until ordered to do so by its state regulatory body." Id. at 1259, n.11.

conclusions reached by the Department's consultant, Dr. Peter Huber, concerning the value of benchmarks, specifically noting that "[Dr. Huber] believes that the existence of seven BOCs provides benchmarks that are likely to be useful to the regulators in identifying attempted abuses of the remaining bottleneck monopolies."[8] In his report, Dr. Huber found that reliance on benchmarking had improved the effectiveness of the Commission's regulation in the area of interconnection in particular, observing that:

> Benchmarking one LEC's performance against another in the post-divestiture marketplace has proved an effective regulatory tool. Laggard or eccentric LEC performance stands out when eight large holding companies [i.e., the seven RBOCs and GTE] line up for periodic regulatory inspection. . . .[9]

---

8 Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Operating Companies by the Modification of Final Judgment ("DOJ Report and Recommendations") (filed February 2, 1987) at 44.

9 Peter W. Huber, The Geodesic Network: 1987 Report on Competition in the Telephone Industry, at 3.24 (1987). Elsewhere in his report, Dr. Huber observes that:

> . . . the FCC's ability to use one RHC's performance to benchmark another's makes regulatory oversight considerably easier than it once was . . . [I]f regulators themselves sometimes fail to spot network idiosyncrasies, adversely affected parties generally do not. . . .

Id. at 5.17.

Dr. Huber also cited the positive impact of benchmarks in other areas of regulation (e.g., cost allocation) as well.[10] In recommending elimination of the RBOC manufacturing prohibition, the Department cited "the emergence of multiple independent benchmarks for regulatory comparison of cost allocation and equipment purchase decisions" as one of two "major changes" which served to significantly reduce the potential for anticompetitive cross-subsidization.[11]

In its own filings with the Court in the MFJ Triennial Review proceedings, the Commission itself described the positive impact of the new benchmarks created by divestiture on its ability to constrain anticompetitive conduct by the BOCs. In its response to the Justice Department's Report and Recommendations, the Commission observed that:

> The divestiture itself makes it easier for the Commission to protect the competitive process. The creation of seven regional companies effectively established independent benchmarks for comparing BOC performance.[12]

---

10 Id. at 3.54-3.55 and 6.39 (noting that "benchmark regulation can be used quite effectively to weed out idiosyncratic LEC tariffs and cost allocations -- which might otherwise be tailored to advantage the LEC-affiliated ISP.")

11 DOJ Report and Recommendation at 165.

12 Comments of the Federal Communications Commission as Amicus Curiae on the Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Operating Companies by the Modification of Final Judgment ("DOJ Report and Recommendations") (filed March 13, 1987) at 10.

The Commission went on to report that it had "been able to take advantage" of the benchmark approach to determine "minimum standards or maximum rates."[13] In a separate filing, the Commission again noted that "[a] critical difference between regulating a monolithic Bell System and overseeing independent, competitive BOCs is the ability to compare or 'benchmark' the actions of the separate companies."[14]

The RBOCs themselves -- including the parties to the transaction which is the subject of this application and other already completed and proposed mergers -- were particularly vociferous in emphasizing the benefits arising from their creation as seven independent entities, each of them available for regulators to use as "benchmarks" in their efforts to identify and constrain anticompetitive discrimination and cross-subsidy. Indeed, the comments filed by one of the parties to the instant application, Ameritech, in response to the Justice Department's Report and Recommendations, included a lengthy attachment cataloguing the "widespread and effective use of benchmark comparisons since 1982" by the FCC, the Justice Department, the Court, and the private sector "in ways that would

---

13 Id.

14 Responsive Comments of the Federal Communications Commission As Amicus Curiae on the Report and Recommendations of the United States Concerning the Line of Business Restrictions Imposed on the Bell Operating Companies by the Modification of Final Judgment ("DOJ Report and Recommendations") (filed April 27, 1987) at 5.

have been inconceivable prior to divestiture."[15] In its comments to the Court, Ameritech asserted that the "division of the local exchange networks among seven independent companies has greatly enhanced the delectability of any monopoly abuse and the effectiveness of regulation," adding that "[t]he utility and effectiveness of such 'benchmark comparisons' among the regional companies is demonstrated by the extensive record of their actual use."[16] In a subsequent filing, Ameritech went on to argue that "[n]o amount of sophistry can suppress the importance of benchmarks," citing "overwhelming evidence that divestiture-created benchmarks are being used effectively by regulators, the

---

15 Ameritech Comments on the Report and Recommendations of the United States Concerning the Line-of-Business Restrictions (filed March 13, 1987), Attachment A at A-2.

16 Id. at 10-11. Similarly, in the introduction to its extended description of the post-divestiture use of benchmark comparisons, Ameritech observed that:

> Today the seven regional companies and GTE operate local exchange networks of approximately the same size. The actions and decisions of any of these eight independent firms establish 'benchmarks' by which the actions and decisions of the other seven can be evaluated.
>
> The presence of benchmark comparisons makes competition more effective because customers can make more informed decisions. Equally important, the presence of benchmark comparisons permits regulators and others to evaluate the merits of an operating company's actions or decisions even in circumstances where direct competition is absent.

Ameritech Comments, Attachment A, at A-1.

Department and the industry as safeguards against any potential anticompetitive conduct or regulatory abuse."[17]

The other party to the merger which is the subject of this application, SBC, in its response to the DOJ's Report and Recommendations, also emphasized the importance of benchmarks, observing that:

> Perhaps the most profound change in the telecommunications industry since the announcement of the settlement that resulted in the MFJ is the existence of the seven RHCs as independent, publicly held companies. . . . The integrated Bell System was literally beyond comparison. Neither regulators, financial markets, nor the public had a benchmark against which the practices of AT&T could be measured.
>
> The creation of the seven RHCs completely changed those circumstances. The FCC can now monitor the rates, performances, and business practices of the seven RHCs to detect potential anticompetitive activities."[18]

In its comments to the Court, SBC further asserted that the existence of the seven RBOCs as benchmarks provides "an effective deterrent against even subtle attempts to abuse any advantages

---

17 Ameritech's Response to Comments on the Report and Recommendations of the United States Concerning the Line-of-Business Restrictions (filed April 24, 1987) at 23; also see Ameritech's Reply to Responses to Comments on the Report and Recommendations of the United States Concerning the Line-of-Business Restrictions (filed May 22, 1987) at 3-7.

18 Comments of Southwestern Bell Corporation on the "Report and Recommendations of the United States Concerning Line of Business Restrictions (filed March 13, 1987) at i, 9-10.

that might arise from the ownership of local exchange telecommunications facilities."[19]

Comments submitted by another RBOC, Pacific Telesis (PacTel), which has since been merged into SBC, echoed the same theme, citing the "division of the Bell System into eight parts and the new ability of regulators to measure the BOCs against each other" as factors which have resulted in "an increased ability of regulatory agencies to identify and safeguard against improper discrimination and improper cross-subsidies."[20] Subsequent filings and expert testimony submitted by PacTel to the Court emphasized the ability of regulators to "use the other BOCs and GTE as benchmarks" in specific areas such as interconnection and procurement.[21]

The comments filed by other RBOCs which are not parties to the pending application included similar statements highlighting the benefits of having seven independent entities available to utilize as benchmarks. NYNEX, which is now subsumed within Bell Atlantic, noted in its comments to the Court that prior to divestiture "courts and regulators had practically no opportunity to develop 'benchmarks'" and observed that

---

19 Id. at ii.

20 Comments of the Pacific Telesis Group in Support of the Recommendations of the United States (filed March 13, 1987) at 9-10.

21 Further Comments of Pacific Telesis Group, Pacific Bell, and Nevada Bell (filed April 27, 1987) at 75, 89, 95; also see Affidavit of Jerry A. Hausman at ¶¶ 26, 56, 60.

"[d]ivestiture changed all this" by establishing seven independent companies, thereby providing "[a] firm, constant and readily available basis . . . for comparing the actions of any one against the actions of another."[22] Similarly, BellSouth's response to comments on the DOJ Report and Recommendations noted that the existence of seven RBOCs will "facilitate the detection of questionable competitive practices by allowing each BOC to serve as a benchmark for the others."[23] In its comments to the Court, U S WEST asserted that concerns with regard to the potential for anticompetitive cross-subsidies and discrimination in favor of RBOC-affiliated interexchange operations were unfounded, noting that "each of the other RHCs would provide a check or benchmark for the conduct of any one of them."[24] In this respect, U S WEST observed, "the effectiveness of federal

---

22 Response of NYNEX Corporation to the Comments filed on the Report and Recommendations of the Department of Justice (filed April 27, 1987) at 22-23.

23 BellSouth Response to Comments on the Justice Department Recommendations and Memorandum in Support of Motion for Relief from Section II(D) of the Modification of Final Judgment (filed April 27, 1987) at 16; also see Comments of BellSouth Corporation on the Justice Department Recommendations Concerning Section II(D) of the Modification of Final Judgment (filed March 13, 1987) at 22, noting that "[s]ince there are now seven Regional Holding Companies, regulators can and do compare the activities of all so that the practices of any BOC manufacturing affiliate can be used as a benchmark to detect undesirable conduct by other BOCs."

24 Memorandum for U S WEST, Inc. Presenting Points and Authorities in Support of Its Motion for Relief from Line of Business Restrictions Imposed by Section II(D) of the Modification of Final Judgment and Responding to Comments, (filed April 27, 1987) at 147.

and state regulatory agencies has been significantly enhanced by divestiture."[25]

Affidavits submitted by the RBOCs in connection with their joint request for removal of the MFJ information services restriction, filed in the proceedings which followed the 1990 Court of Appeals' decision remanding this issue to the District Court, also emphasized the importance and effectiveness of the benchmarks created as a result of the AT&T divestiture. In one such Affidavit, for example, Professors Kenneth J. Arrow and Andrew M. Rosenfield observed that "[d]ivestiture also has made effective regulation easier by helping regulators evaluate and control the conduct of the RBOCs through the use of 'benchmarks,'" and noted that "the use of such benchmarks has already become standard practice at the Antitrust Division, the FCC and state public utility commissions."[26] In their affidavit, Messrs. Arrow and Rosenfield went on to assert that "[t]he availability of benchmarks greatly increases the probability that any attempt to discriminate in the provision of regulated service

---

25 Id.

26 Reply Memorandum of the Bell Companies in Support of Section VII Motions for Removal of the Section II(D)(1) Restriction on the Provision of Information Services, Reply Affidavit of Kenneth J. Arrow and Andrew M. Rosenfield, ¶ 43, citing the use of benchmarks by regulators "in evaluating compliance with equal access requirements and in comparing installation and maintenance practices for CPE."

to information service competitors would be detected and defeated quickly."[27]

In its initial 1987 ruling in the MFJ Triennial Review proceeding, the District Court acknowledged the RBOCs' argument that, in contrast to the situation that existed prior to divestiture, "now . . . benchmarks exist by which the performance of one of them can be measured against that of the six others."[28] However, the Court rejected the notion that this fact constituted a sufficient "changed circumstance" to justify modification of the MFJ line of business restrictions, observing that "the possibility of the existence of benchmarks was necessarily included in the decree assumption which imposed the restrictions upon the several successors of the Bell System."[29] The Court also found that the RBOCs could take individual and collective

---

27 Id.; also see Affidavit of Sanford J. Grossman, ¶ 28 ("divestiture has also increased the likelihood of detection by allowing regulators and competitors of the BOCs to compare one BOC to the other," and accordingly it is "very unlikely, as an institutional matter, that a BOC or its managers would undertake anticompetitive actions now"), and Reply Affidavit of Dennis W. Carlton and George J. Stigler, ¶¶ 44-45 (citing the AT&T divestiture and the existence of seven RBOCs as having "improved significantly the ability of regulators, antitrust authorities and rivals to detect and defeat attempts to behave anticompetitively").

28 United States v. Western Elec. Co., 673 F.Supp. 525, 547 (D.D.C. 1987).

29 Id.

action of various sorts to prevent the successful use of a benchmarking approach.[30]

The D.C. Circuit, in its 1990 Order resolving RBOC appeals of the District Court's ruling, agreed that "as the District Court noted, the mere existence of seven BOCs in place of the prior unified Bell System is not by itself a significant factor" sufficient to justify a modification of the decree.[31] The Court of Appeals concluded, however, that it was appropriate to consider "the asserted existence of 'benchmarks' for comparing BOC performance" in determining whether the standard for removal of the line of business restrictions established in Section VIII(C) was met.[32] In its opinion, the Court of Appeals noted that "[a]ccording to appellants and the FCC, these benchmarks would make it far easier to regulate the BOCs than the old Bell System if the BOCs were permitted to enter other markets," but found that "the district court still legitimately

---

30 In its opinion, the Court noted that "the Regional Companies are free, by virtue of the regulations proposed by the FCC, to adopt entirely dissimilar accounting and other procedures, making impossible intelligent benchmark comparisons between and among them." Id. at 547-548. In addition, the Court observed, "the Regional Companies are, of course, quite capable of cooperating with each other, if necessary, to defeat any benchmark-type comparison scheme." Id. at 548, n. 97.

31 United States v. Western Elec. Co., 900 F.2d 283, 299 (D.C. Cir. 1990).

32 Id.

imposes on the petitioning BOCs the burden of making the requisite showing."[33]

In considering whether the District Court's refusal to lift the MFJ manufacturing restriction was justified, the Court of Appeals observed that "while the risk of cross-subsidization cannot be eliminated completely, FCC regulation -- especially the availability of benchmarks to enforce effective accounting rules -- would 'significantly mitigate' it."[34] Ultimately, of course, the Court of Appeals affirmed Judge Greene's decision maintaining the MFJ interexchange and manufacturing restrictions, but reversed and remanded the District Court's determination that the information services restriction should be modified, but not eliminated.[35]

Subsequently, in its 1993 opinion affirming the District Court's decision on remand removing the information services restriction, the D.C. Circuit found that the existence of the seven RBOCs and the resulting use of benchmark comparisons had in fact materially enhanced the effectiveness of regulators, concluding that:

> There is a lot of evidence that the break-up and other recent developments have enhanced regulatory capability. . . . [T]he existence of seven [R]BOCs increases the number of

---

33 Id.

34 Id. at 302.

35 Id. at 311.

> benchmarks that can be used by regulators to detect discriminatory pricing. . . . Indeed, federal and state regulators have in fact used such benchmarks in evaluating compliance with equal access requirements . . . and in comparing installation and maintenance practices for customer premises equipment.[36]

On the basis of its finding that the availability and use of benchmarks had enhanced the ability of regulators to constrain anticompetitive conduct by the RBOCs and other factors, the Court of Appeals determined that removal of the MFJ information services restriction was appropriate.[37]

Following the Court of Appeals' ruling, the RBOCs renewed their efforts to secure removal of the remaining MFJ line of business restrictions, and in July 1994, four of the RBOCs, including SBC, filed a Motion to Vacate the Decree.[38] In their supporting memorandum, the RBOCs again cited their existence as seven independent entities, available for regulators to use as benchmarks, as a significant factor supporting removal of the MFJ interLATA and manufacturing line of business restrictions, stating that:

> The story is quite different today. To some extent, the Decree itself is responsible for

---

36 United States v. Western Elec. Co., 993 F.2d 1572, 1580 (D.C. Cir. 1993), cert. denied 126 L.Ed. 2d 438 (1993), citing the Arrow/Rosenfield, Grossman, and Carlton/Stigler affidavits described above, supra n.26-27.

37 Id. at 1582.

38 Motion of Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation and Southwestern Bell Corporation to Vacate the Decree (filed July 6, 1994).

> making regulation effective. As the Court of Appeals has explained, '[t]he seven independent BOCs are not the old AT&T'. . . . Each BOC serves as a benchmark against which the Commission can measure the performance and behavior of the next; such comparisons were quite impossible before divestiture.[39]

The RBOC's memorandum went on to note that "[t]he FCC also uses an automated system known as ARMIS to track BOC accounts over time and to compare the accounts of different BOCs, giving it 'unprecedented capability' to exploit the 'benchmarking' possibilities created by divestiture."[40]

In addition, a number of the affidavits submitted in conjunction with the RBOCs' motion emphasized the enhanced ability of regulators to utilize benchmark comparisons between and among the seven RBOCs and GTE to more effectively constrain the potential for discrimination and cross-subsidization in various areas, e.g., interconnection/access, procurement. The joint affidavit submitted by former Commissioner Henry Rivera and two former FCC Common Carrier Bureau Chiefs, for example, asserted that:

> Detection of interconnection problems today is easier than in the past as the result of two related developments. First, the break-up of the Bell System has produced numerous,

---

39 Memorandum of Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, and Southwestern Bell Corporation in Support of Their Motion to Vacate the Decree (filed July 6, 1994) at 29-30.

40 Id. at 35, citing Affidavit of James E. Farmer at ¶¶ 29, 31 and Affidavit of Henry Rivera, Richard Firestone, and Albert Halprin at ¶¶ 80-81.

> similarly situated regional companies. Each of these companies' performance can be used as a benchmark for the rest. Although these comparisons alone cannot conclusively resolve whether discrimination has occurred -- each region is different because each has different network configurations and a different mix of equipment -- the Commission has used these benchmarks with great success, comparing BOC ONA plans and CEI proposals for such services as audiotex, protocol conversion, voice mail, electronic mail, remote monitoring, and computer storage. This is precisely the opposite of the situation confronted by the Commission before the Decree, when the Bell Companies were all part of a single integrated entity.
>
> Second, the creation of numerous competing telecommunications companies has created a whole new class of sophisticated and aggressive whistleblowers. . . . [L]ike the FCC itself, these companies often will deal with several BOCs; as a result, they are able to detect discrimination by comparing the behavior and performance of each of the companies with which they deal.[41]

The affidavit submitted by Professor Gary S. Becker in conjunction with the RBOCs' motion also emphasized the value of benchmarking, in the areas of access and procurement, observing that:

> Even provision of interLATA services to within-region customers raises fewer risks of discrimination against competitors than it did a decade ago. Whether local exchange companies provide equal access is now routinely monitored by regulators. Also, service providers that require local exchange access, such as those offering long distance and information services, can readily compare the quality and price of access provided by

---

41 Affidavit of Henry Rivera, Richard Firestone, and Albert Halprin, at ¶¶ 58-60.

> other LECs in determining whether they are subjected to discrimination. . . .
>
> Even RBOC manufacture of equipment that does or can interconnect with its local network raises fewer competitive concerns than at the time the decree was entered. If the prohibition on manufacturing were eliminated, regulators would be helped in detecting discrimination against unaffiliated equipment providers by analyzing equipment purchasing patterns of the integrated RBOCs (and customers in their regions) against a variety of other benchmarks including the other RBOCs and other large LECs such as GTE.[42]

Similarly, the affidavit submitted by Professors Arrow and Carlton noted that "[i]f the equipment manufacturing ban is removed, regulators would still be able to compare the purchasing practices of any of the RBOCs against those of the six other RBOC benchmarks as well as GTE and other large local exchange providers," and asserted that "[t]his environment facilitates detection of attempts to discriminate against unaffiliated suppliers."[43]

On April 11, 1996, the District Court issued an order terminating the MFJ effective as of February 8, 1996, the date on which the Telecommunications Act of 1996 was signed into law.[44] Pursuant to the Court's Order, all pending motions were dismissed as moot.[45] Accordingly, there was no judicial determination as

---

42 Affidavit of Gary S. Becker, ¶¶ 15, 17.

43 Affidavit of Kenneth J. Arrow and Dennis W. Carlton, ¶ 26.

44 United States v. Western Elec. Co., 1996-1 Trade Cas. (CCH) ¶ 71,364 at 76,837 (April 11, 1996) (D.D.C.).

45 Id.

to the merits of the arguments advanced in support of the RBOCs' Motion to Vacate the Decree.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 82-0192
	)	
WESTERN ELECTRIC COMPANY, INC. and AMERICAN TELEPHONE AND TELEGRAPH COMPANY,	)	
	)	
Defendants.	)	

ATTACHMENTS
TO
AMERITECH'S COMMENTS ON THE REPORT AND RECOMMENDATIONS OF THE UNITED STATES CONCERNING THE LINE-OF-BUSINESS RESTRICTIONS

March 13, 1987

Attachment A

BENCHMARK COMPARISONS

Divestiture has created the conditions for effective monitoring of the nation's telephone operating companies by customers, competitors, the Department of Justice, the Court and others and for effective regulation by the Federal Communications Commission. Today, the seven regional companies and GTE operate local exchange networks of approximately the same size. The actions and decisions of any of these eight independent firms establish "benchmarks" by which the actions and decisions of the other seven can be evaluated.

The presence of benchmark comparisons makes competition more effective because customers can make more informed decisions. Equally important, the presence of benchmark comparisons permits regulators and others to evaluate the merits of an operating company's actions or decisions even in circumstances where direct competition is absent. Since divestiture, the regional companies have faced both burgeoning competition and a proliferation of benchmarks affecting nearly everything they do. The upshot is that the regional companies live under a spotlight that may be unique in the business community.

The use of benchmark comparisons has become a standard practice of the regional companies' customers and competitors, as well as the FCC and the Department of Justice. Benchmark comparisons are used on large items and small items. They are used on

questions ranging from costs and profits, to network scheduling, to technical feasibility -- in short, wherever a regional company's decisions materially affect a competing economic interest group. This Attachment illustrates the widespread and effective use of benchmark comparisons since 1982, in ways that would have been inconceivable prior to divestiture.

I. USE OF BENCHMARK COMPARISONS BY THE PRIVATE SECTOR

The private sector -- including carriers, customers and others -- has often used benchmark comparisons in proceedings before the Department of Justice, the Court, and the Federal Communications Commission:

A. Use of Benchmark Comparisons before the Department of Justice and the Court.

- In its August 6, 1984 Comments on the regional companies' equal access compliance plans, AT&T made the following comparative assessments of those plans:
  - Contrasting the NYNEX, Ameritech, Southwestern Bell and Northwestern Bell plans for terminating equal access with the silence of the other regional companies. (AT&T Comments at 6).
  - Comparing equal access conversion schedules. (Id. at A-2).
  - Contrasting the BellSouth, U.S. West and NYNEX plans to provide customer presubscription lists with the silence of the other regional companies. (Id. at A-6).
  - Contrasting the willingness of Ameritech, Pacific Bell and Southwestern Bell to provide Maintenance Limit data with the silence of the other regional companies. (Id. at A-9).

- In its August 21, 1984 Comments on the regional companies' compliance plans, MCI made the following comparative assessments:
  - Comparing access tandem deployment schedules. (MCI Comments at 3-5).
  - Comparing end office conversion schedules. (Id. at 5-9).
  - Comparing access ordering requirements. (Id. at 10).
  - Comparing availability of toll usage data. (Id. at 14).
  - Comparing the Bell Atlantic, Pacific Telesis and Pacific Northwest Bell plans for allocation of access capacity. (Id. at 16-19).
  - Comparing presubscription procedures and reports. (Id. at 23-31).
  - Comparing plans for calling card services and directory assistance. (Id. at 35).
  - Comparing plans for switched access from public telephones. (Id. at 36).
  - Contrasting Ameritech's inclusion of various equal access information in its compliance plans with the omission of that information by the other regional companies. (Id., Exhibit 4).
- In its August 17, 1984 Comments on the regional companies' compliance plans, Satellite Business Systems made the following comparative assessments:
  - Contrasting Ameritech's commitment to deploy access tandems rapidly with other companies' plans for direct trunking. (SBS Comments at 7).
  - "Southwestern Bell appears to have responded most completely of all the BOCs to the [transmission quality] information requests

presented by the Department . . ." (Id. at 16).

- Comparing presubscription procedures and reports. (Id. at 27-42).

- Contrasting the plans of NYNEX, Southwestern Bell and Pacific Bell for calling card services with the silence of the other regional companies). (Id. at 44).

o In its August 6, 1984 Comments on the regional companies' compliance plans, GTE Sprint made the following comparative assessments:

- Contrasting Northwest Bell's plans to allocate undesignated traffic with other companies' default of that traffic to AT&T. (GTE Sprint Comments at 6).

- Comparing availability of customer lists. (Id. at 7-9).

- Comparing plans for access tandem deployment. (Id. at 24).

o In its May 10, 1985 letter from Michael Salsbury to Kevin Sullivan at the Department, MCI compared the presubscription activities of each of the regional companies with respect to four issues:

1) Presubscription order confirmation;

2) Conflict resolution;

3) Notification of new customers; and

4) Notification of installation timeliness.

For example, MCI contrasted the presubscription conflict procedures (which have since been standardized through FCC directives) of Ameritech, NYNEX, and Pacific Bell. Letter at 8 n.8.

- In its Report To The Department of Justice on RBOC Compliance With Equal Access (Aug. 16, 1985), MCI made numerous comparisons among the regional companies' presubscription procedures and reports, including:
  - Comparing regional company presubscription confirmations, customer information, billing practices and report formats. (Report Sec. II at 4-5).
  - Comparing automated versus manual input of presubscription orders into switches. (Id. at 6).
  - Comparing schedules for presubscription implementation. (Id., Sec. III at 2 n.2).
  - Comparing presubscription report formats. (Id. at 3 n.3, 5 n.5).
  - Comparing methods of resolving presubscription conflicts. (Id. at 10 n.20).
  - Comparing charges for certain presubscription reports. (Id. at 11 n.20, 21).
  - Comparing Bell Atlantic and Ameritech positions on verification of presubscription orders. (Id. at 15 n.31).
- In arguing its position concerning its February, 1986 requests for equal access at approximately 1400 regional company end offices, MCI made extensive comparisons with respect to those companies' equal access conversion schedules, procedures, and responses to the February, 1986 MCI requests. MCI's Objections To The RBOCs' August 1 Filings Concerning Bona Fide Requests For Equal Access Conversions (D.D.C.; Aug. 15, 1986).

B. Use Of Benchmarks Comparisons Before The Federal Communications Commission

Allocation Plan

o MCI compared Ameritech's proposed Allocation Order conflict resolution plan to BellSouth's plan. MCI concluded and argued to the Commission that Ameritech's proposal should be allowed, while BellSouth's proposal should be denied. Reply of MCI to Petition of Ameritech and BellSouth, Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I (filed Sept. 26, 1985).

Bidirectional WATS

o MCI Telecommunications Corp. commented that "[i]n contrast to the behavior of the other LECs," Ameritech promptly provided MCI with unblocked, unscreened, two-way WATS access lines. MCI commended Ameritech's efforts, particularly in light of the fact that other LECs have the same switching equipment as Ameritech. "Ameritech's efforts lay in stark contrast to the promised slow deliveries of the other LECs." Reply of MCI Telecommunications Corp., Mid-Year 1986 Access Tariff Filings at 2-3 n.4 (filed July 25, 1986).

Equal Access

o In its reply comments, Lexitel Corp. presented a chart comparing all operating companies' order verification

reports. Lexitel analyzed the operating companies' performance data and concluded that some operating companies performed better than others. Accordingly, Lexitel argued that the Commission needed to define equal access and establish availability requirements. Establishment of a Comprehensive Definition of "Equal Access" to Local Exchange Facilities to Ensure Equal Opportunities for Competitive Provision of InterLATA Telecommunications Services, RM No. 5196 (filed Dec. 5, 1985).

Generic Rate of Return Formula

o In its July 3, 1986 reply brief in Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800, Phase III, GTE argued its position on interstate access rate of return methodologies by presenting data to the Commission that compared the following:

- The regional companies' capital structure components. (Exhibit 3).
- The regional companies' rates of return on common equity and rate base. (Exhibit 4).
- The regional companies' adjusted Commission quarterly DCF calculations. (Exhibit 5).

Rate Levels

- MCI made numerous comparisons of operating companies in its January 7, 1985 Comments And Petition To Reject, Or, In The Alternative, To Suspend And Investigate, Investigation Of Access And Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part I, Trans. No. 31. MCI's comments included comparative charts on the following:
  - Intrastate private line rates for NECA and Non-NECA BOCs. (Tables 2 and 3).
  - Special access rates for Digital Data Service. (Table 5).
  - Special access rates between carriers for voice grade service. (Table 4).
  - Special access investment per circuit. (Table 6).
  - Special access demand data. (Table 7).
  - Forecast number of access connections and special access lines. (Table 8).
  - Major unit investments used to allocate revenue requirements to rate elements. (Table 9).
- In its November 22, 1983 comments on the Investigation of Access and Divestiture Related Tariffs, Phase I, CC Docket No. 83-1145, Western Union Telegraph Co. presented tables to demonstrate local carriers' rate increases. Specifically, the tables compared rates for identical two-wire voice-grade facilities within various mileage, transport and exchange/wire center categories. (Tables 12 to 15). Western Union also compared the 1978 Bell System rates to the 1982 separate

rates and the proposed special access rates. (Tables 16 to 23).

- o AT&T used an operating company comparison to demonstrate three rate alternatives to the Commission. AT&T's Application for Review, Investigation of Access and Divestiture Related Tariffs, Phase I, CC Docket No. 83-1145 at 21 (filed June 26, 1984).
- o AT&T included a comparison of various operating companies' special access monthly charges for three-mile voice-grade facilities in its discussion of interim special access tariff arrangements as opposed to Docket 20099 tariff arrangements. Brief of Intervenor AT&T, The Western Union Telegraph Co. v. FCC, Nos. 84-1177, 84-1641, 84-1642, 85-1115, 85-1124, 85-1148, 85-1151, 85-1183, 85-1204, 85-1300 at 12 n.24 (filed June 27, 1986).1/

II. USE OF BENCHMARK COMPARISONS BY THE DEPARTMENT OF JUSTICE

The Department has made extensive use of benchmark comparisons in defining decree obligations and in monitoring compliance with those obligations. With respect to equal access, the Department has compared each regional company's practices,

---

1/ See also AT&T's Application for Review, Investigation of Access and Divestiture Related Tariffs, Phase I, CC Docket No. 83-1145 at 3 (filed June 26, 1984).

procedures, schedules and positions with those of the other regional companies. The Department has tended to define regional company equal access obligations based upon the highest level of performance achieved by any of the regional companies. For example:

- The Department reviewed the revised conversion schedules and other responsive materials from each of the regional companies concerning MCI's February, 1986 requests for equal access at approximately 1400 end offices.2/ Based upon the schedules of some of the regional companies, the Department concluded that a 24-month interval between receipt of a bona fide request and conversion is prima facie reasonable for conversion of nonconforming offices. In comparing the different regional companies' conversion schedules, the Department observed that the regional companies "that propose substantially to complete their conversions within 24 months from the request . . . provide a 'yardstick' to which the more extended schedules must be compared to

---

2/ See, e.g., Memorandum of Ameritech On Its Equal Access Performance and the accompanying Affidavits of Gerald I. Malik and Joseph F. Luby (July 31, 1986), and Ameritech's Reply To The MCI, AT&T And Sprint Responses To Its Revised Equal Access Schedule, which was supported by the Supplemental Affidavits of William B. Wells, Harry N. Stephenson, and James R. Nette (Aug. 22, 1986).

determine whether they satisfy the decree standards." Memorandum Of The United States Regarding BOC Schedules For Equal Access at 15, (D.D.C.; Nov. 21, 1986).

- As part of its review of regional company responses to MCI's February, 1986 access requests, the Department noted that several companies were exploring the use of adjunct devices to provide equal access at nonconforming offices and requested detailed information from each of the regional companies concerning their experience with and plans for such devices. This information was requested so that the Department could evaluate the reasonableness of office conversions scheduled beyond a 24 month interval and report to the Court its conclusions regarding use of such adjunct devices. See, e.g., January 9, 1987 Letter from Nancy C. Garrison of the Department to Kenneth E. Millard of Ameritech.
- Based upon its review of information from each of the regional companies, the Department compared and contrasted the equal access progress of the regional companies on a wide range of issues, including:
  - Availability of equal access;
  - Conversion of conforming end offices;
  - Cellular radio equal access;
  - Equal access for 800 and 900 Services; and
  - Equal access from public telephones.

With respect to each of these issues, the Department used the highest level of performance achieved among the regional companies as a benchmark in assessing the progress of the others. Report Of The United States To The Court Concerning The Status Of Equal Access (D.D.C.; Oct. 31, 1986).

- The Department has made extensive use of benchmark comparisons among the regional companies' presubscription procedures and reports. Based on those comparisons, the Department has defined specific information that should be reported promptly to carriers as part of the presubscription ordering and conversion process, including:
  - Notice of receipt and disposition of presubscription orders;
  - Notice of conflicts among presubscription orders;
  - Notice that a presubscription order has been superseded by a subsequent order; and
  - Verification of presubscription order implementation.

  Report Of The United States To The Court Concerning Equal Access Implementation at 9-10, 11-52 (D.D.C.; Feb. 7, 1986).

- In comments in the FCC's Third Computer Inquiry, the Department noted that the existence of seven regional companies, separate from AT&T and from each other, should increase the regulatory abilities of the FCC:

> [I]nstead of being faced with a single accounting proposal from an integrated AT&T, the Commission will have the benefit of different accounting proposals from the BOCs and AT&T, each of which will have the incentive to devise a facially effective set of accounting rules. The multiplicity of accounting approaches offered the Commission may increase its ability in the future to establish the types of regulatory tool necessary to prevent discrimination and improper cost shifting.

Comments Of The United States Department Of Justice, CC Docket No. 85-229 at 41-42 (Nov. 13, 1985).

- As part of its review of the regional companies' decree compliance plans, the Department solicited additional comments on those plans from all interested parties. Appended to that Notice was the Department's list of more than 41 benchmark comparisons that the Department compiled through its review of those plans. Notice Of Comment Period Regarding The BOCs' Compliance Plans (D.D.C.; June 29, 1984).

- In the DOJ Response To Public Comments On The GTE Consent Decree, the Department also concluded that GTE's equal access performance "can be tested against the objective benchmarks of the practices of the divested BOCs . . . ." 48 Fed. Reg. 46,655 at 46,657-68 (Oct. 13, 1983). See also GTE Competitive Impact Statement, 48 Fed. Reg. 22,026 at 22,033-4 (May 16, 1983) (any discrimination by GTE against interexchange

carriers can be detected by comparison with the regional companies).

III. USE OF BENCHMARK COMPARISONS BY THE COURT

Coinless Public Telephones

- In ordering Pacific Bell to provide access lines for AT&T's coinless public telephones, the Court rejected various regulatory and public interest arguments by Pacific Bell and noted that "[a]ll the Operating Companies except Pacific Bell appear to be providing the required access." United States v. AT&T, 583 F. Supp. 1257, 1258 n. 4, 1259 n. 11 (D.D.C. 1984).

800 Service

- The Court compared the reluctance of two regional companies to absorb the cost of a new billing system for intraLATA 800 Service with the willingness of the other regional companies to do so. United States v. AT&T, Mem. Opinion at 4 n.4 (D.D.C.; May 4, 1984).

Sale of CPE

- The Court compared Bell Atlantic's attempt to sell embedded CPE to the General Services Administration with the behavior of the other regional companies, which had not attempted such sales. United States v. AT&T, 578 F. Supp. 680, 684 n.13 (D.D.C. 1983).

Installation and Maintenance of CPE

- The Court stated that "with seven different Operating Companies involved in installation and maintenance, claims of one Operating Company that it had particular difficulties or problems with the equipment of manufacturers it did not sell could be readily undermined by a comparison with the practices of the other six companies." "Given the high probability of disclosure," the Court considered it "quite improbable that the Operating Companies would run this risk for relatively little gain." United States v. AT&T, 1982-2 Trade Cas. (CCH) ¶ 64,980 at 73,151 n.8 (Aug. 23, 1982).

Equal Access by GTE

- The Court recognized that "GTE's implementation of equal access will be judged not only against the requirements of the decree, but also against two objective benchmarks: (1) the Bell operating companies' provision of equal access; and (2) the provision of equal access by the GTE Operating Companies in the cities not served by Sprint." Any violation would be "relatively easy to detect." United States v. GTE Corp., 603 F. Supp. 730, 735 (D.D.C. 1984).

IV. USE OF BENCHMARK COMPARISONS BY THE FEDERAL COMMUNICATIONS COMMISSION

The Commission not only compares one regional company to another but also compares GTE to the regional companies and vice versa. In discussing "equal access," for example, the Commission recently observed:

> Because of inherent differences in equipment and size of carriers providing access facilities, the Commission adopted requirements for the larger exchange carriers, i.e., the Bell Operating Companies and General Telephone Operating Companies, which differ from those applicable to the generally smaller ITCs [Independent telephone companies].

Indiana Switch Access Division, File No. W-P-C 5671, Mimeo No. 3652 at 8 ¶ 16 (rel. Apr. 10, 1986) ("Indiana Switch Access Division").

Default Traffic

- All operating companies except Northwestern Bell proposed routing to AT&T all interLATA calls originated by any customer who did not presubscribe to another interexchange carrier. Northwestern Bell proposed allocating non-presubscribing customers pro rata. The Commission imposed an allocation plan on all the regional companies modeled after the Northwestern Bell plan, encouraged other regional companies to use Northwestern Bell's customer material format, and required the GTE operating companies to adopt a Northwestern Bell-type plan. Investigation of Access and

Divestiture Related Tariffs, 50 Fed. Reg. 25982, 25987 ¶ 32 & n.44 (June 24, 1985) ("Default Traffic Plan Order").

Sales Agency Plans

- Ameritech, NYNEX, BellSouth and U.S. West submitted new or modified sales agency proposals to the Commission. The Commission compared the plans and accepted only the BellSouth and U.S. West plans as being in compliance with the Sales Agency Order. Sales Agency Plans for the Furnishing of Intrastate Basic Service and Customer Premises Equipment, 59 Rad. Reg. (P&F) 309, 311 ¶ 3 (1985) ("Reconsideration Order").
- NYNEX and Ameritech submitted modified sales agency plans for approval. The Commission accepted both, commenting that Ameritech's amended plan conformed "essentially to the plan submitted by BellSouth and accepted by the Commission in the Reconsideration Order." Amended Sales Agency Plans of American Information Technologies Corp. and Operating Companies and NYNEX Operating Companies, ENF 84-49 and 84-51 at ¶¶ 1, 6 (rel. Oct. 20, 1986).

Cellular Interconnection

- Noting that some telephone companies had offered cellular carriers trunk-side connections (Type 2) as

well as standard line-side connections (Type 1), the Commission in effect, required all telephone companies, including GTE and the regional companies, to make available Type 2 interconnection. The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad. Reg. 2d (P&F) 1275, 1284 ¶ 3 (rel. Mar. 5, 1986) ("Cellular Interconnection").

Comparably Efficient Interconnection

- The Commission in its Third Computer Inquiry proceedings reviewed proposals and comments from each regional company regarding nondiscriminatory access for information services. Ameritech's proposal to introduce a new network architecture, Feature Node/Service Interface, triggered the Commission's broader initiative to require similar proposals from the other regional companies.3/ "Because it is in the carrier's competitive self-interest to utilize efficient interconnections, we view Ameritech's proposal as an indication that an architecture with highly efficient interconnections can be designed." Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer

---

3/ Third Computer Inquiry, 50 Fed. Reg. 33,581, 33,600 ¶¶ 125-129 (Aug. 20, 1985).

Inquiry), 104 FCC 2d 958, 1063-1064 ¶ 212 (1986) ("Computer III Decision").

Equal Access

- The Commission granted waivers for recovery of equal access costs to NYNEX and Bell Atlantic. The Commission compared other waiver requests to these and granted them if they were "consistent." The Commission also based its rulemaking proceeding to establish permanent procedures for equal access cost recovery on NYNEX's and Bell Atlantic's approaches. MTS and WATS Market Structure Amendment of Part 69 of the Commission's Rules for Recovery of Equal Access Costs, CC Docket No. 78-72, FCC No. 86-595 at ¶¶ 8 & n.20, 11 (rel. Jan. 15, 1987).
- The Commission modeled a proposal requiring all operating companies to provide certain information to the IXCs serving their operating areas after a program implemented by Northwestern Bell. After reviewing comments in opposition to the Northwestern Bell plan from other operating companies, the Commission decided not to impose the requirements. GTE Sprint Communications Corp., US Telecom, Inc., Allnet Communications Services, Inc., and United States Transmission Systems, Inc. Joint Petition for Expedited Rulemaking, 60 Rad. Reg. 2d (P&F) 763, 768-769, 770 ¶¶ 12, 13, 17 (1986).

- The Commission established an equal access implementation schedule that distinguished the non-GTE independent telephone companies from GTE and the regional companies.4/ "[A]ccess requirements adopted for the BOCs and GTOCs are different from those approved for the ITCs." MTS and WATS Market Structure Phase III, 100 F.C.C. 2d 860, 874 ¶ 47 (1985).5/

Billing Information

- The Commission granted Ameritech's waiver request from certain Feature Group A (FGA) usage surrogate requirements. "Because we have concluded that Ameritech's proposal is a reasonable method for developing usage surrogates, we believe its use by other carriers could be appropriate for purposes of the filing required by the Surrogate Order. Accordingly, we will entertain petitions for waiver from other carriers who may wish to use the same method for calculating their usage surrogates." Petition of Ameritech Operating Companies

---

4/ Indiana Switch Access Division at 9 ¶ 16; Petitions of MCI Telecommunications and GTE Sprint Communications Corp. Regarding the Validity of Connecticut Statute and Decisions of the Connecticut Dep't of Public Utility Control Relating to Unauthorized Intrastate Traffic, FCC 86-450 at 9 ¶ 37 (rel. Oct. 27, 1986).

5/ Indiana Switch Access Division at 1 ¶ 3.

for Waiver of Feature Group A Usage Surrogate Requirements, Mimeo No. 2788 (rel. Feb. 24, 1986).

Spread Spectrum Waivers

- The Commission granted Northwestern Bell a waiver to collocate enhanced technology in its central offices. The waiver was granted subject to numerous conditions. These conditions set the standard for waiver requests by other operating companies. The Commission promised prompt action if the other operating companies filed waiver requests consistent with the Commissionn's directives to Northwestern Bell. Applied Spectrum Technologies, Inc., 58 Rad. Reg. 2d (P&F) 881, 888-90 & n.28 (1985).6/

Generic Rate of Return Formula

- The Commission proposed assigning each exchange carrier to one of several "rate of return groups." Some operating companies argued that each Bell region should be treated as a separate rate of return group. In reply comments, Ameritech observed that sufficient similarities existed among the regions to justify grouping all regional companies together during the

---

6/ See, e.g., The Mountain States Tel. & Tel. Co., AAD 6-1104, Mimeo No. 3515 at ¶ 1 (rel. Apr. 2, 1986).

first two-year return period. Specifically noting Ameritech's position, the Commission adopted a single rate of return group for all exchange carriers -- the regional companies, GTE and other independent telephone companies -- over the continuing objections of the other regions. Interstate Services of AT&T Communications and Exchange Telephone Carriers, 51 Fed. Reg. 1795, 1797 ¶ 10 (Jan. 15, 1986).

Rate Levels

- The Commission contrasted with other regional companies' practices Southwestern Bell's (SWB) requirement that MCI's seven-digit FGA numbers be associated with WATS line usage. The commission decided to reject SWB's tariff. "In regard to the proposal that Other Common Carriers (OCCs) supply seven-digit numbers in conjunction with terminating WATS access line service, it remains unclear why SWB does not use its own records, as have other regions." Southwestern Bell Telephone Co., Trans. Nos. 1505, 46, 1249, 817, 853, 135, Mimeo No. 2199 at ¶ 6 (rel. March 6, 1987).
- In developing its Annual 1985 Access Tariff Filings, Phase II, FCC 87-50 (rel. March 9, 1987), the Commission made the following comparisons from information submitted by GTE and Bell operating companies:

- The Commission contrasted operating companies' methods of calculating cancellation charges. (Id. at ¶¶ 94-100).

- The Commission compared operating companies' expedited order charge calculation methodologies to the NYNEX methodology. (Id. at ¶¶ 112, 116-123).

- The Commission compared operating companies' data on minimum monthly usage charges to review the reasonableness of those charges. (Id. at ¶¶ 39, 42, 22).

- The Commission chose BellSouth's proposed language as "an example of the clarity necessary to inform customers," after examining the operating companies' service interruption credit allowances. (Id. at ¶ 56).

- The Commission decided that it "would accept as reasonable a notice period of up to two days, as suggested by BellSouth" for service discontinuation. (Id. at ¶ 182).

o Over an eighteen month investigation of individual access tariff rates, the Commission compared the rates proposed by each operating company for individual access rate elements as one basis for determining whether the other operating companies' rates might be outside the zone of reasonableness and would, thus, require further investigation. The Commission also compared the regional companies' and GTE's proposed rate structures in arriving at a reasonable structure for various access rate elements. Investigation of Access and Divestiture Related Tariffs, 97 F.C.C.2d 1082, 1098-99, 1100-1101, 1104 ¶¶ 39, 44-45, 52 (Feb. 17, 1984).

- With the benefit of AT&T's analysis of those methodologies, the Commission compared the regional companies' various cost development methodologies. Investigation of Access and Divestiture Related Tariffs, 49 Fed. Reg. 23924, 23927-928 ¶¶ 21-27 (June 8, 1984).
- After comparing and contrasting other regional companies' interim 800 service tariffs, the Commission granted Bell Atlantic's requested waiver of Part 69 of the rules because the Commission had "previously granted similar petitions filed by US WEST, NYNEX and Ameritech for reasons that apply equally to Bell Atlantic." Interim 800 Exchange Access Tariffs, CC Docket No. 86-279, Mimeo No. 5586, at ¶¶ 2, 10 (rel. July 3, 1986).
- Various regional companies filed petitions requesting waiver, clarification or reconsideration of an order requiring the removal of all direct and indirect restrictions on the use of WATS access lines. After comparing all the petitions, the Commission concluded "that Ameritech's request for a waiver of the current standard ordering interval is justified." While rejecting other regional companies' waiver requests, the Commission granted Ameritech's waiver "for all carriers." Midyear 1986 Access Tariff Filings, 60 Rad. Reg. 484, 489, 490 ¶¶ 18, 22 (1986).

- The Commission cited the troubles that one regional company had in developing an accurate cost ratio between 2-wire and 4-wire service as a reason to impose a ratio on all regional companies that differed significantly from the ratios reflected by the regional companies who did not profess to have problems. The Commission then placed the burden on carriers that believed that a different ratio was appropriate to "make such a showing as the basis for a request for waiver . . . ." Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166 at 51-52 & n.152 ¶¶ 105-106 (rel. May 24, 1985) ("Special Access Cost Order").

Protocol Waivers - Accounting Plan

- The Commission used New Jersey Bell's protocol waiver request to establish standards for reviewing similar Computer II waiver requests by the other operating companies after directing certain revisions in New Jersey Bell's cost accounting plan. New Jersey Bell Tel. Co., ENF 84-22, Transmittal No. 474, Mimeo No. 0426 at 14-15 ¶ 32 (rel. Oct. 24, 1985).7/

7/ See, e.g., Pacific Bell Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations to Authorize Protocol Conversion Offerings, AAD 6-1326 at 2
(Footnote Continued)

Protocol Conversion - Marketing Plan

- The Commission accepted various operating companies' proposals to market customer proprietary information because their procedures "are patterned after those [the Commission] approved for New Jersey Bell and the other Bell Atlantic companies" and "are also similar to those which the Commission approved when it relieved AT&T of the separate subsidiary requirement for the provision of CPE."8/ In addition, the Commission compared each operating company's protocol conversion offering with the conditions established for other operating companies in the Protocol Waiver Order.9/

(Footnote Continued)
¶ 13 (rel. Dec. 3, 1986) ("Pacific Bell Petition"); Southwestern Bell Telephone Co. Petition for Waiver of Section 64.702 of the Commission's Rules to Provide and Market Asynchronous Protocol Conversion on an Unseparated Basis, AAD 6-1473 at 2 ¶ 13 (rel. Jan. 5, 1987) ("Southwestern Bell Petition) ; Ameritech Operating Companies' Petition for Waiver of Section 64.702 of the Commission's Rules (Computer II) to Provide Protocol Conversion as an Adjunct to a Basic Packet Switched Network, AAD 6-1424 at 2 ¶ 13 (rel. Oct. 20, 1986) ("Ameritech Petition"); The Bell Atlantic Telephone Cos. Petition for Waiver of Section 64.702 of the Commission's Rules to Provide Certain Types of Protocol Conversion, AAD 5-1296 at 337 ¶ 47 (rel. May 19, 1986) ("Bell Atlantic Petition").

8/ See also Ameritech Petition at 6 ¶ 55; Pacific Bell Petition Bell Atlantic Petition at 338 ¶ 49.

9/ Petitions for Waiver of Section 64.702 of the Commission's Rules and Regulations, 100 FCC 2d 1057 (1985) ("Protocol Waiver Order").

Southwestern Bell Telephone Co. Petition for Waiver of Section 64.702 of the Commission's Rules to Provide and Market Asynchronous Protocol Conversion on an Unseparated Basis, AAD 6-1473 at 7 ¶¶ 18-21, 52 (rel. Jan. 5, 1987).10/

Non-Traffic Sensitive Cost Recovery Plans

- Five regions filed petitions seeking access charge waivers. Four regions proposed a fixed (non-usage sensitive) charge. New England Telephone proposed a usage sensitive scheme. Although the Commission rejected all petitions, it invited the operating companies to file waiver petitions requesting permission to implement plans similar to New England Telephone's proposal. Petitions for Waiver of Various Sectors of Part 69 of the Commission's Rules, 60 Rad. Reg. (P&F) 142, 193, & ¶ 144 (1986).

10/ See Ameritech Petition at 3 ¶ 20; Pacific Bell Petition at 3 ¶ 24; Bell Atlantic Petition at 333 ¶¶ 23-26.